

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13**

**NAMASTE CHARTER SCHOOL
Employer**

and

**Cases 13-AC-217424
13-UC-218740**

**CHICAGO TEACHERS UNION, LOCAL 1,
IFT, AFT AFL-CIO
Petitioner**

DECISION AND ORDER

Upon a Petition for Amendment of Certification (“AC petition”) duly filed under Section 9(b) of the National Labor Relations Act, as amended, on March 29, 2018, and a Petition for Clarification of the Unit (“UC petition”) duly filed on April 19, 2018, a hearing was held before a hearing officer of the National Labor Relations Board to determine whether it is appropriate to amend the certification of the unit in accord with the AC petition and clarify the existing bargaining unit as set forth in the UC petition. Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board.¹

I. Issues and Parties Position

A. The AC Petition

The Petitioner, Chicago Teachers Union Local 1 (“CTU” or “Petitioner”), seeks to amend the Certification of Representative to reflect the recent merger of the certified² bargaining representative, Chicago Alliance of Charter Teachers and Staff, Local 4343, IFT, AFT, AFL-CIO

¹ Based on the entire record in this proceeding, I find:

- a. The hearing officer’s rulings, made at the hearing, are free from prejudicial error and are hereby affirmed.
- b. The parties stipulated and I find that the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
- c. The parties stipulated and I find that Chicago Teachers Union Local 1 is a labor organization within the meaning of the Act.
- d. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of 9(c)(1) and Sections 2(6) and (7) of the Act.

² The March 15, 2018 Certification Of Representative reads as follows:

Chicago Alliance of Charter Teachers And Staff, Local 4343, IFT, AFT, AFL-CIO is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

Included: All full-time and regular part-time employees including Teachers, Interventionists, Dean of Students, Alumni/Transition Coordinators, Aides, Paraprofessionals, Classroom Assistants, Health and Wellness Coordinators, Social Workers, Office Clerks, Facilities Engineer, and Diverse Learning Specialists at Namaste Charter School employed by the Employer at its facility currently located at 3737 South Paulina St., Chicago, IL 60609. Excluded: Monitors, Business Managers, Development Managers/Directors/Associates, Executive Director/Head of School, Consultants, Director of the Culture

(“ChiACTS”) with the CTU. The Petitioner avers that there is substantial continuity between ChiACTS and the CTU and that any changes since the merger have been ministerial, such that the amendment to the certification should be granted.

The Employer, Namaste Charter School (“Employer”), asserts that the merger of the unions resulted in such substantial changes that a question concerning representation has been created and that, rather than granting an amendment to the current certification, a new election should be directed to allow bargaining unit employees to vote as to whether they want CTU to represent them.

B. The UC Petition

The Petitioner seeks to clarify³ the existing bargaining-unit to include the Office Operation Manager (“OOM”) in the current unit, maintaining that the OOM is and always has been a non-supervisory and non-confidential employee who should be in the bargaining unit.

The Employer maintains that it is not appropriate to include the OOM in the bargaining unit as she is a supervisor under Section 2(11) of the Act, and therefore asserts that the UC petition should be dismissed.

II. Decision

Based upon the entirety of the record adduced at hearing and the parties’ post-hearing briefs, I find that CTU’s petition to amend the Certification of Representative is proper in that the affiliation of ChiACTS with CTU did not dramatically alter the identity of the certified bargaining representative and did not create a question concerning representation warranting a new election. Therefore, the Petitioner’s amendment to the certification is granted. Further, I find that the Employer did not meet its burden to establish that the Office Operation Manager position possesses supervisory indicia sufficient to establish Section 2(11) supervisory status under the Act. Accordingly, I grant CTU’s petition to clarify the unit and find that the disputed classification of Office Operation Manager should be included in the bargaining unit described infra.

III. Applicable Legal Principles and Analysis

A. Amendment To Certification

and Engagement, Director of Finance and Operations, Director of Teaching and Learning, Lead Interventionists, Instructional Coaches, Instructional Leaders, Dual Language Coach & Coordinators, Diverse Learner Coaches & Coordinators, confidential employees, managerial employees, guards and supervisors as defined in the Act.

³ Prior to the underlying election in this matter, the parties agreed to allow the OOM to vote under challenge because they could not agree on the inclusion or exclusion of the position. Challenges were not sufficient to affect the outcome of election. Since the certification of the unit, the parties have still been unable to come to any agreement as to the inclusion or exclusion of the OOM in the bargaining unit, and have specifically submitted the issue to be decided through the the instant UC mechanism.

1. Legal Standard

Flowing from the Board's express authority under Section 9(c)(1) of the Act to issue certifications is the implied authority to amend them to reflect changed circumstances such as a merger or change in the name or affiliation of the labor organization if such changed circumstances result in sufficient continuity of representation. In assessing continuity questions, the Board considers the totality of the circumstances, "eschewing the tendency toward a 'mechanistic approach'." *Mike Basil Chevrolet, Inc.*, 331 NLRB 1044, 1045 (2000). The Board considers the following factors in looking at the totality of the circumstances:

[C]ontinued leadership responsibilities by the existing union officials; the perpetuation of membership rights and duties, such as eligibility for membership, qualification to hold office, oversight of executive council activity; the dues/fees structure; authority to change provisions in the governing documents; frequency of membership meetings; the continuation of the manner in which contract negotiations, administration, and grievance processing are effectuated; and preservation of the certified union's physical facilities, books, and assets.

Western Commercial Transport, 288 NLRB 214, 217 (1988).

As the Board noted in *Western Commercial Transport*, *supra*, the critical question is whether the changes are so great that a new organization has come into being. Affiliations will often make a change in the structure of the representing union but not every change raises a question concerning representation. *Mike Basil Chevrolet*, *supra*.

2. ChiACTS' affiliation with CTU Demonstrates Sufficient Evidence Of Continuity and Does Not Raise A Question Concerning Representation

The record evidence shows there is a substantial continuity between ChiACTS and CTU in regard to the Employer's bargaining unit employees such that the amendment to the certification should be granted.

Prior to the March 1, 2018 merger of ChiACTS with CTU, ChiACTS represented around 1,000 charter school teachers and staff from 10 different charter schools throughout Chicago, including the Employer. CTU represents around 23,000 teachers and staff throughout Chicago. With the merger, ChiACTS became the Charter Division of CTU.

The former President, Vice President, Secretary, and Treasurer of ChiACTS became the Chair, Vice Chair, Secretary, and Trustee, respectively, of the CTU Charter Division. The CTU Charter Division Chair, Vice Chair, and Trustee are voting members of the CTU House of Delegates (the body on which there are representatives from all of the schools) and members of the CTU Executive Board. The former ChiACTS officers unquestionably have far fewer members on the CTU's House of Delegates than they did when they comprised their own Executive Board, but the Board has repeatedly rejected relative sizes of the two organizations as

a basis for finding discontinuity. *Mike Basil Chevrolet*, supra, *Western Commercial Transport*, supra, *CPS Chemical Co.*, 324 NLRB 1018 (1997), enf. 160 F.3d 150 (3rd Cir 1998).

Prior to the merger, each charter school network represented by ChiACTS had elected network councils whose officers were elected by the membership of the particular charter school network. After the merger, it is undisputed that these charter school network councils remain intact and that local officers continue to be elected by the membership at the particular charter school network, including the one at the Employer. Prior to the merger, council bylaws had to be approved by ChiACTS Executive Board. After the merger, council bylaws have to be approved by the CTU President. ChiACTS only asset, its bank account, was transferred to CTU pursuant to the unions' affiliation agreement. ChiACTS did not own or lease any property prior to the merger.

As a result of the affiliation, the former ChiACTS members did not have to pay any initiation fees to CTU, and their length of membership in ChiACTS has been credited as time in membership in CTU. Former ChiACTS members' dues will rise by a little over \$100 per year for up to three years so they will be in line with CTU dues. The Board notes that it is reasonable to assume that employees who vote to affiliate and thereby attain stronger representation and better services expect that it will be more expensive. *Mike Basil Chevrolet*, supra.

ChiACTS membership meetings were held twice per year, with five percent of the membership constituting a quorum and a simple majority vote needed for actions. Since the merger, Charter Division CTU membership meetings are held twice per year, with five percent of the membership constituting a quorum and a simple majority vote needed for actions.

Finally, and most significantly, the affiliation agreement between ChiACTS and CTU expressly permits the bargaining unit and the local union officers to retain control over their own affairs in terms of collective-bargaining. The entire CTU membership does not participate in the negotiation, approval, or ratification of charter school collective-bargaining agreements – only the respective charter school officers and members do. CTU staff and attorneys assist former ChiACTS officers in negotiating collective-bargaining agreements, but they undisputedly assisted in this process in the same manner even before the merger. The Employer's unit employees are able to maintain a significant voice in labor relations affecting their own unit – a core element in assessing whether or not the affiliation significantly altered the identity of ChiACTS

As acknowledged by the Board as a key factor in affiliation cases, the CTU constitution and bylaws in the instant case "recognize the spirit and intent of local contractual relations," in that a great deal of authority for the handling of local matters remains in the hands of the membership of the charter school units. See *Mike Basil Chevrolet*, supra. While the Employer makes much of the overall size of CTU and the relatively small number of delegates afforded this particular charter school at the highest levels of CTU leadership, the Employer neglects to acknowledge how much local autonomy the Charter Division of CTU still has regarding the bargaining unit employees at issue. The evidence discussed above clearly indicates that the CTU members

employed by the Employer will continue to be in “a strong position to influence the positions taken by their representative in specific dealings with their Employer”. *Id.*

Accordingly, based on the record, there is not a loss of continuity resulting from the merger between ChiACTS and the CTU to warrant a finding that the affiliation occasioned a question concerning representation for this bargaining unit. I therefore amend the certification as requested by the Petitioner.

B. Unit Clarification

1. Legal Standard

It is a well-established principle that the Board's authority to issue certifications under § 9(c)(1) of the Act carries with it an implied authority to police such certifications, and to clarify them as a means of effectuating the policies of the Act. As such, the Board has developed procedures for a petition allowing clarification of a bargaining unit. The guiding principles for unit clarification were set out in *Union Electric Co.* 217 NLRB 666, 667 (1975):

Unit clarification, as the term itself implies, is appropriate for resolving ambiguities concerning the unit placement of individuals who, for example, come within a newly established classification of disputed unit placement or, within an existing classification which has undergone recent, substantial changes in the duties and responsibilities of the employees in it so as to create a real doubt as to whether the individuals in such classification continue to fall within the category - excluded or included - that they occupied in the past.

Where, as in the instant matter, there is a certified or currently recognized bargaining representative and no question concerning representation exists, the unit clarification petition mechanism allows for the Board to resolve doubt regarding placement. *United Electric*, supra; §102.60(b) of the Board's Rules and Regulations. In particular, where parties cannot agree on whether a disputed classification should be included in the unit but do not wish to press the issue at the expense of reaching a contract... *Sonoco, Inc.* 347 NLRB 421 (2006). In the instant case, both parties, following an unresolved dispute as to the eligibility of the OOM at the election, have agreed to resolve the issue of whether the OOM position is a supervisory position and therefore excluded from the unit, or non-supervisory and therefore included in the unit via the instant petition.

2. The OOM position Is Non-Supervisory Under Section 2(11) Of The Act And Should Be Included In The Bargaining Unit

a. Board Law as To Supervisory Status

Section 2(11) of the Act defines a supervisor as:

“any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The party asserting supervisory status, in this case the Employer, has the burden of establishing such status. See e.g., *NLRB v. Kentucky River Community Care*, 532 U.S. 706, 711-712 (2001). Conclusionary evidence does not satisfy that burden. See e.g., *Lynwood Manor*, 350 NLRB 489, 490 (2007). Thus evidence of supervisory status must be specific. *Brusco Tug & Barge, Inc.*, 359 NLRB No. 43, slip op. at 5 (2012), *Avante at Wilson, Inc.*, 348 NLRB 1056, 1057 (2006).

A finding of supervisory status is warranted only where the individual in question possesses one or more of the indicia set forth in Section 2(11) of the Act. *Providence Alaska Medical Center*, 320 NLRB 717, 725 (1996), *enfd.* 121 F.3d 548, 156 LRRM 2001 (9th Cir. 1997); *The Door*, 297 NLRB 601 (1990); *Phelps Community Medical Center*, 295 NLRB 486, 489 (1989). The statutory criteria are read in the disjunctive, and possession of any one of the indicia listed is sufficient to make an individual a supervisor. *Providence Alaska Medical Center*, *supra*, 320 NLRB at 725; *Juniper Industries*, 311 NLRB 109, 110 (1993). The statutory definition specifically indicates that it applies only to individuals who exercise independent judgment in the performance of supervisory functions and who act in the interest of the employer. *NLRB v. Health Care & Retirement Corp.*, 511 U.S. 571, 574; *Clark Machine Corp.*, 308 NLRB 555 (1992). The Board analyzes each case in order to differentiate between the exercise of independent judgment and the giving of routine instructions, between effective recommendation and forceful suggestions, and between the appearance of supervision and supervision in fact. *Providence Alaska Medical Center*, *supra*, 320 NLRB at 725. The exercise of some supervisory authority in a merely routine, clerical or perfunctory manner does not confer supervisory status on an employee. *Id.*; *Juniper Industries*, *supra*, 311 NLRB at 110. The authority effectively to recommend “generally means that the recommended action is taken with *no* independent investigation by superiors, not simply that the recommendation is ultimately followed,” *ITT Lighting Fixtures*, 265 NLRB 1480, 1481 (1982) (emphasis in original). The sporadic exercise of supervisory authority is not sufficient to transform an employee into a supervisor. *Robert Greenspan, DDS*, 318 NLRB 70 (1995), *enfd.* mem. 101 F.3d 107, (2d Cir. 1996), *cert. denied* 117 S.Ct. 68, (1996), citing *NLRB v. Lindsay Newspapers*, 315 F.2d 709, 712 (5th Cir. 1963); *Gaines Electric*, 309 NLRB 1077, 1078 (1992); *Ohio River Co.*, 303 NLRB 696, 714 (1991), *enfd.* 961 F.2d 1578 (6th Cir. 1992). Job descriptions or other documents suggesting the presence of supervisory authority are not given controlling weight. The Board insists on evidence supporting a finding of actual as opposed to mere paper authority. *East Village Nursing Center v NLRB*, 160 LRRM 2342, 2345-2346 (D.C. Cir. 1999); *Store Employees Local 347 v. NLRB*, 422 F.2d 685 (D.C. Cir. 1969); *NLRB v. Security Guard Services*, 384 F.2d 143 (5th Cir. 1969), *enfg.* 154 NLRB 8 (1965); *North Miami Convalescent Home*, 224 NLRB 1271, 1272 (1976).

b. The OOM does Not Possess Any Supervisory Indicia

Office Operation Manager Myrna Salgado Romo (“Romo”) reports directly to the Executive Director and Finance Director. She works in the front office, where she inputs data for students, handles schedules for students, and contacts teachers if and when coverage is needed.

Romo trained the school clerk (who happens to be her sister), but the evidence clearly shows that she did so as a function of having worked in the office and knowing how to operate the Employer’s computer system and how to fill out the requisite forms used on the job. The school clerk does not report to Romo. The school clerk reports to the Director of Finance and Operations (as does Romo).

Romo participated in creating a posting for the school clerk position, but she did this with the Business Manager, who was stipulated to be excluded from the bargaining unit, and the draft she worked on was then sent for review and editing by the Executive Director of the Employer before it was posted.

Moreover, though the Employer makes much of the fact that Romo participated in interviews of a few school clerk candidates, the evidence shows that the first school clerk Romo “interviewed” was a friend of the Executive Director and who was specifically brought in for an interview by invitation/recommendation of the Executive Director. Romo merely spoke with the candidate by phone (along with the Business Manager) to see if she was a good fit for the Employer. Romo’s feedback to the Executive Director after the “interview” was that she thought the candidate was “nice” and sounded like someone she could work with. The Executive Director did not bring in any other candidates for interviews and hired that clerk. The current clerk is Romo’s sister, and, other than telling the Executive Director that her sister was available for the job, Romo took no part in interviewing or hiring her. Romo’s sister was interviewed by and hired by the Executive Director and Business Manager.

On one occasion, Romo was the person who told a former clerk that she was going to be let go. The evidence shows that Romo merely informed the clerk of the decision that had been made by the Executive Director, and that she (Romo) had no part in making the decision to terminate that clerk.

Romo works in the office from 6:45 am to 2:45 pm. The clerk (Romo’s sister) works in the office from 9:00 am to 5:00 pm. When the clerk calls off, she must email everyone in the office and submit a leave request on the Employer’s server. Her time off is approved by the Executive Director or the Director of Finance - Romo has no involvement in the clerk’s schedule or her time.

Romo does not evaluate the clerk. In fact, there is no evaluation process for the Employer’s front office employees. Romo testified that the most she will do to give feedback to the clerk is to say words to the effect of “nice job” as they are performing their duties. At most, Romo answers standard questions from the clerk about where to find forms or where to transfer a

call from a parent. The Executive Director testified that Romo would be held accountable if the clerk were to perform poorly, but the Employer failed to provide any evidence to substantiate this bare claim, either through follow-up testimony or through any documentary evidence.

The evidence clearly demonstrates that Romo, as OOM, actually functions as a lead clerk. She performs duties similar to those of the clerk but has more experience and longevity, which allows her to perform introductory training functions. These facts do not make her a supervisor. See, i.e. *Lynwood Manor*, 350 NLRB 489, 490 (2007); *Brusco Tug & Barge, Inc.*, 359 NLRB No. 43, slip op. at 5 (2012), *Avante at Wilson, Inc.*, 348 NLRB 1056, 1057 (2006), *supra*.

Based upon the foregoing, the Employer did not meet its burden to show that Romo possesses any supervisory indicia or that she possesses authority to assign or responsibly direct any other employees under Section 2(11) of the Act. Accordingly, I find that she should be included in the existing bargaining unit, and I grant the Petitioner's unit clarification to do so.

IV. Order

Based on the foregoing, it is ordered that the amendment to the certification and the clarification of the bargaining unit are warranted, and the AC and UC petitions in this matter are granted.

Accordingly, the Certification of Representative issued in Case 13-RC-212742 on March 15, 2018 is hereby amended by substituting the Chicago Teachers Union, Local 1, IFT, AFT, AFL-CIO as the certified union.

The Unit description set forth in the Certification of Representative issued in Case 13-RC-212742 on March 15, 2018 is hereby clarified to include the position of Office Operation Manager in the certified unit.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67(c) of the Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary of the National Labor Relations Board. The request for review must conform to the requirements of Section 102.67(d) and (e) of the Board's Rules and Regulations and must be filed by **June 15, 2018**.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

CTU/Namaste
13-AC-217424
13-UC-218740

Dated at Chicago, Illinois this 1st day of June, 2018.

/s/ **Peter Sung Ohr**

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